

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
JUNE 23, 2008**

A regular meeting of the Greensboro Board of Adjustment was held on Monday, June, 23rd, 2008 at 2:00 p.m. in the Plaza Level Conference Room of the Melvin Municipal Office Building. Board members present were: Chair John Cross, Russ Parmele, Michael Schiftan, Bill Strickland, Ryan Shell, Scott Brewington and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator and Rawls Howard, Zoning Administrator, as well as Jerry Kontos, City Attorney's Office.

Chair Cross called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES FROM LAST MEETING

Mr. Parmele moved to approve the minutes of the May 27, 2008 meeting minutes as submitted, seconded by Mr. Brewington. The Board voted 6-0 in favor of the motion. (Ayes: Cross, Parmele, Schiftan, Strickland, Shell, and Brewington. Nays: None.)

SWEARING IN OF STAFF

Staff was sworn in for items addressed on the agenda.

REQUESTS

The following requests for continuance or withdrawal were received and will be considered at the next meeting of the Greensboro Board of Adjustment which is scheduled for Monday, July 28, 2008 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building, or the item has been withdrawn.

VARIANCE

(B) BOA-08-17: 350 MCADOO AVENUE LORI ANN HARRIS REQUESTS A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. VIOLATION: A PROPOSED 7 FOOT HIGH FENCE WILL EXCEED THE MAXIMUM HEIGHT OF 4 FEET BY 3 FEET WITHIN 15 FEET OF THE MCADOO AVENUE AND GORRELL STREET RIGHTS-OF-WAY. SECTION 30-4-9.6(A), PRESENT ZONING-TN1, BS-6, CROSS STREET-GORRELL STREET. (CONTINUED)

Lori Ann Harris requested a continuance for 60 days. She stated that a continuance was requested to allow her to present the plans to the home owners' association before the item is heard by the Board.

Mr. Shell moved to continue the item for 60 days, seconded by Mr. Brewington. The Board voted to approve the motion 6-0. (Ayes: Cross, Parmele, Schiftan, Strickland, Shell, and Brewington. Nays: None.)

APPEAL OF NOTICE OF VIOLATION

- (A) BOA-08-20: 117 SOUTH ELM STREET THE N CLUB APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF A PROHIBITED SIGN. VIOLATION #1: ELECTRONIC CHANGEABLE SIGNS CANNOT RUN IN A CONTINUOUS TRAVEL MODE AND ANIMATED SIGNS ARE PROHIBITED. SECTION 30-2-2.11 AND SECTION 30-5-5.2. (THIS PORTION OF THE VIOLATION WILL NOT BE HEARD AT THIS MEETING, AND IS CURRENTLY IN COURT/MEDIATION PROCESS). VIOLATION #2: A SIGN WHICH FUNCTIONS AS AN OUTDOOR ADVERTISING SIGN (BILLBOARD) IS NOT A PERMITTED SIGN IN THE CB ZONING DISTRICT. SECTION 30-2-2.11 AND SECTION 30-5-5.6. PRESENT ZONING-CB, BS-1, CROSS STREET-EAST MARKET STREET. (WITHDRAWN)**

The item was withdrawn by the City, at this time.

NEW BUSINESS**VARIANCE**

- (A) BOA-08-16: 901 MARTIN STREET THE REDEVELOPMENT COMMISSION AND GREENSBORO HOUSING DEVELOPMENT PARTNERSHIP REQUEST A VARIANCE FROM A SIDE STREET SETBACK REQUIREMENT. VIOLATION: A PROPOSED SINGLE FAMILY DWELLING WILL ENCROACH 1.39 FEET INTO A 15-FOOT SIDE SETBACK ADJACENT TO DOUGLAS STREET. TABLE 30-4-6-1, PRESENT ZONING-RS-7, BS-5, CROSS STREET - DOUGLAS STREET. (GRANTED)**

Rawls Howard read the background information into the record. The property is a corner lot. It is located at the southeastern intersection of Martin Street and Douglas Avenue on zoning map block sheet 5. It is rectangular in shape. The dimensions are 60 x 174 x 40 x 173 feet. The total lot area is approximately 8,700 square feet. The applicant is proposing to construct a one-story dwelling which will contain approximately 1,200 square feet. The lot is part of the Ole Asheboro Redevelopment Community. The applicant is proposing for the property to be developed in conjunction with their guidelines along with Housing and Community Development guidelines. The applicant is proposing to construct a single family dwelling which will encroach 1.39 feet into a 15-foot minimum side street setback adjacent to Douglas Street. The RS-7, Residential Single-Family District is primarily intended to accommodate high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density on RS-7 will typically be 5.0 units per acre or less.

Chair Cross asked if there was anyone wishing to speak in favor of this matter.

Barbara Harris, Greensboro Housing Authority, 300 W. Washington St. stated the property is owned by the Redevelopment Commission and Greensboro Housing Development Partnership (GHDP) that the property is part of the Old Asheborough Neighborhood, which is a designated redevelopment area. The Redevelopment Plan for the area was adopted by Council in 1980, and amended in 2004. The amended plan includes several initiatives, including scattered site infill. This lot is one of the lots for the scattered site infill. The guidelines for development of all scattered lots require owner occupancy and houses that are a minimum of 1,200 sq. ft. Corner

lots require a side porch. This lot is being sold to Self-Help community development corporation. They presented a development design that meets the design guidelines and redevelopment requirements. The applicant requested a variance on the side set back of 1.39 ft. to allow construction of the house. She stated that the lot narrows as it goes back, and that is one of the reasons for the setback issue. She also stated that the side porch was a requirement for the Old Asheborough Neighborhood.

Mr. Turner arrived at 2:15 p.m. for the remainder of the meeting.

Dan Laveen, Self-Help CDC, 301 W. Main St., Durham, stated that they were interested in acquiring this lot from the Redevelopment Commission and the GHDP. He stated that this was the smallest house plan that met all the neighborhood and redevelopment guidelines. He also stated that only a small part of the dining room, not the entire house, would intrude on the side setback.

Mr. Schiffan stated that he has a conflict of interest due to work with Self-Help CDC.

Mr. Parmele moved to allow Mr. Schiffan to recuse himself from the item, seconded by Mr. Brewington. The Board voted 5-0-1 to approve the motion. (Ayes: Cross, Parmele, Strickland, Shell, and Brewington. Nays: None. Abstention: Schiffan)

No one spoke in opposition to the item.

Mr. Brewington moved that the Zoning Enforcement Officer be overruled, and the variance granted in the case of BOA-08-16 based on the following findings of fact: There are practical difficulties, or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he or she can make no reasonable use of the property. There is a unique shape to this lot which provides for the minimal encroachment. Given the development guidelines of the neighborhood, in the requirements for the type of architecture and the foot print of the house, no reasonable use of the property could be made. The hardship of which the applicant complains results from the unique circumstances of the property, including the fact that the lot tapers toward the back resulting in the difficulty of the side set back. The hardship results from the application of this ordinance to the property because of the unique nature of the lot and the specific requirement of the neighborhood. The hardship is not the result of the applicants own actions. The variance is in harmony with the general purpose and intent of the ordinance, and preserves the spirit of the neighborhood given that it maintains the architectural integrity of a historic district. The granting of the variance assures the public safety and welfare, and does substantial justice. The small encroachment to the side set back does not provide any barriers to safety or inflict upon the welfare of the community. The motion was seconded by Mr. Strickland. The Board voted 5-0-1 to approve the motion. (Ayes: Cross, Parmele, Strickland, Shell, and Brewington. Nays: None. Abstention: Schiffan.)

(C) BOA-08-18 6428-A BURNT POPLAR ROAD DAVID BAUCOM REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT. VIOLATION: A BUILDING THAT IS UNDER CONSTRUCTION WHICH WILL CONTAIN THE GOLD CLUB WILL REQUIRE 224 SPACES WHEN ONLY 185 SPACES CAN BE PROVIDED; THEREFORE, A REDUCTION OF 39 SPACES IS REQUESTED. TABLE 30-5-3-1, PRESENT ZONING-CD-HB, BS-353, CROSS STREET - GALLIMORE DAIRY ROAD. (DENIED)

Mr. Howard stated the property is located on the north side of Burnt Poplar Road, south of Boeing Drive on zoning map block sheet 353. It is rectangular in shape. The lot is recorded and described as Lot #2, in Plat Book 99 on page 141. It contains 4.987 acres. The lot contains a shell building with 8,000 square feet (under construction), which was previously approved on the recent original site plan. The applicant is now proposing to add 2,000 square feet of second story area. This area is proposed to be for employees only and will not increase the occupancy; however, the parking requirement is relative to gross floor area and not occupancy design. Based on 10,000 square feet of gross floor area and 37 employees, the site is required to provide 224 spaces. The applicant has made mention that 4,000 square feet of the building is used by the kitchen and other employees for pre-staging areas. The applicant is proposing to add 2,000 square feet of gross floor area to a building that is currently under construction. The building will contain a sexually oriented business, (an adult cabaret) which requires 224 parking spaces, when only 185 spaces can be provided; thus the applicant is seeking a variance for a reduction of 39 spaces.

The applicant is proposing to add 2,000 square feet of gross floor area to a building that is currently under construction. The building will contain a sexually oriented business, (an adult cabaret) which requires 224 parking spaces, when only 185 spaces can be provided; thus the applicant is seeking a variance for a reduction of 39 spaces.

The HB Business District is primarily intended to accommodate retail, service, and distributive uses which are typically located along thoroughfares. The district is established to provide locations for establishments which cater primarily to passing motorists and require high visibility and good road access. Developments in this district generally have substantial front setbacks.

Chair Cross asked if there was anyone wishing to speak in favor of this matter.

José Morales, 7207 Icon Way, Charlotte, NC, handed several documents to the Board. He stated that the purpose of the request was to allow the building to accommodate a large amount of square footage for employees only. This extra floor area would not increase the occupancy of the building. He stated the documents presented show two different calculations of how the space used for clients could be accommodated with the existing area for parking.

Davis Baucom, 8001 N. Tryon Street, Charlotte, NC, stated that when the building was designed there was enough parking to meet the requirements of the ordinance for the 8,000 sq. ft footprint of the original building. Once the interior of the building was designed, several new amenities were added including a full blown kitchen and staging area for employees. Based on these amenities a second level to the building was added in the design. He stated that the existing parking will be more than adequate for the needs of clientele.

Douglas Atkins, 4319 Ravenstone Drive, owner of the property, stated that the paving of the front of the property, before subdivision, it transferred some of the impervious coverage to the back part of this property. The way the property was subdivided, the back five-acres was almost blocked off, with only one driveway to the area. Mr. Atkins stated that there is a shell building constructed on the property, and parking, lighting, and landscaping is complete. The second floor would be constructed inside the existing building.

Mr. Baucom stated that the design was changed to improve the overall quality of the business. To accommodate these improvements, a second level would be necessary.

Mr. Cross stated that the challenge for the variance related to the legal standards that must be met to allow a variance. Based on these requirements, the variance is difficult to approve.

Mr. Baucom stated that the added square footage would not increase the level of occupancy for the building. Mr. Morales stated that based on the actual area used by clientele there is a surplus of parking spaces.

No one spoke in opposition to the request.

Mr. Strickland moved that in regards to BOA-08-18, based on the stated findings of fact, that the Zoning Enforcement Officer be upheld and the variance denied based on the following: If the applicant complies with the provisions of the ordinance he or she can make a reasonable use of the property, as admitted by the applicant and the developer, seconded by Mr. Turner. The Board voted 7-0 to approve the motion. (Ayes: Cross, Parmele, Schiffan, Strickland, Shell, Turner, and Brewington. Nays: None.)

(D) BOA-08-19: 606-614, 700 & 722 WEST LEE STREET FULTON STREET PARTNERS REQUESTS A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. VIOLATION: A PROPOSED 7 FOOT HIGH FENCE WILL EXCEED THE MAXIMUM HEIGHT OF 4 FEET BY 3 FEET WITHIN 15 FEET OF THE WEST LEE STREET AND FULTON STREET RIGHTS OF WAY. SECTION 30-4-9.6(A), PRESENT ZONING-CD-PDI, BS-7, CROSS STREET - FULTON STREET. (GRANTED)

Mr. Cross stated that he had a conflict of interest in the case, based on his association with Mr. Allen, representing the applicant. Mr. Schiffan moved to allow Mr. Cross to recuse himself, seconded by Mr. Brewington. The Board approved the motion 6-0-1. (Ayes: Parmele, Schiffan, Strickland, Shell, Turner, and Brewington. Nays: None. Abstention: Cross.)

Mr. Howard gave back ground information for the property. The property is a corner lot. It is located at the northwestern intersection of West Lee Street and Fulton Street on zoning map block sheet 7. The lot contains approximately 4.264 acres.

The applicant has received recent site plan approval and the buildings have been constructed. There are five buildings that have front entrances adjacent to West Lee Street. There is a building on the corner that fronts on Fulton Street as well as another building that fronts on Fulton Street. The total project has seven multifamily buildings and eight-six units. The buildings are constructed ten (10) feet from the West Lee Street right-of-way line and ten (10) feet from the Fulton Street right-of-way line. The applicant is proposing to construct a seven (7) foot tall fence around the entire perimeter of the property. The applicant has identified the northern and eastern fence sections as chain link fencing; however, the section adjacent to West Lee Street was not defined, nor did the zoning office receive any fence detail(s).

Zoning Condition #6 states that Parking areas visible from West Lee Street must be screened with a combination of decorative fencing and vegetation. This was shown on the previously approved site plan using a four foot high fence and vegetation. There is a parking lot located adjacent to West Lee Street on the western end of the property and another parking area located between buildings #2 and #3 closer to the intersection with Fulton Street.

Portions of the fence encroach into the railroad right-of-way. Planning cannot approve items in the railroad right-of-way, unless a permission letter is received from the Railroad. The portion of the fence that is located in the Railroad easement is not a Zoning, Ordinance, or Planning requirement.

The applicant is proposing to erect a fence 7 feet tall, which will exceed the maximum height of 4 feet by 3 feet within 15 feet of the West Lee Street and Fulton Street rights-of-way

The CD-PDI, Conditional- Planned Unit Development-Infill District is intended to accommodate residential, commercial, office, and neighborhood business uses developed on small tracts of land as infill development within currently built up areas in accordance with a Unified Development plan.

Mr. Parmele asked if there was anyone present to speak in favor of the request.

Derek Allen, representing the applicant, 230 N. Elm St, handed out a copy of the site plan to the Board members, and stated that property location is extremely unique in Greensboro. The development is pushed up on Lee St. due to the rail-road right of way, and at the request of the City designers. The designers asked that, as a part of the catalytic projects in the Lee Street redevelopment, that the building be put as close to the street as possible to provide a pedestrian feel. The project is also necessary to help provide housing for students at the City's colleges and universities. The decorative fencing is necessary to provide adequate protection to the parking area. Based on conversation with safety experts a 7-ft. height was suggested. A reasonable use of the property cannot be made if the provisions of the ordinance are applied, because if the buildings were to be developed at a regular street set back of 15 ft., a 7 ft. fence would be allowed. But because of the rail road right-of-way and the desire of the City to create a pedestrian feel, the fence must be constructed closer to the street requiring a lower fence height. He further stated that it is unreasonable to require that the 7 ft. fence be constructed 15 ft. behind the constructed building. The hardship, of which they complain, results from the unique circumstances of the property, because of the location in a redevelopment district, the railroad right-of-way to the north, and the topography of the land. The hardship results directly from the application of the ordinance, and is not the result of the applicants own actions. The variance is in harmony with the general purpose and intent of the ordinance, and preserves its spirit. The planned development is exactly what City staff, UNCG, and neighbors requested. The project also ensures the public safety and welfare, and does substantial justice. The construction of a 7 ft. fence helps to improve safety and protection in the development.

No one spoke in opposition to the request.

Mr. Allen stated that having the 7 ft. close to the street does not provide a safety issue regarding sight-lines, and the comment was withdrawn by the DOT. Also, the fence can be seen through.

In discussion from the Board the safety issue was found not to be impeded further due to the fence based on the fact the buildings are being constructed that close to the street.

Mr. Brewington moved that in BOA-08-19 that the Zoning Enforcement Officer be overruled and that the variance be granted, and that Exhibit A be incorporated into the motion based on the following findings of fact: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance no reasonable use can be made of the property. It was demonstrated in Exhibit A

that there was a desire by the City and the developer for the buildings to be located right on the street, to provide a pedestrian nature. Because, of this it does not make sense for the fence to be set back, and the nature of the area requires the use of fencing for protection. The hardship of which the applicant complains is a result of the unique circumstances of the property because of the need for pedestrian features and the railroad right-of-ways. The hardship results from the application of this ordinance to the property because of the maximum fence height requirement does not provide for an adequate level of safety. The hardship is not a result of the applicants' own action. The applicant is attempting to comply with the desires of redevelopment and planning staff. The variance is in harmony with the general purpose and intent of the ordinance, and preserves the spirit through the desire to maintain the pedestrian nature of the development. The granting of the variance ensures the public safety and welfare, and does substantial justice because it maintains the safety of the residents and tries to accommodate the planned desires of this neighborhood, seconded by Mr. Schiffan. The Board voted 6-0-1 to approve the motion. (Ayes: Parmele, Schiffan, Strickland, Shell, Turner, and Brewington. Nays: None. Abstention: Cross.)

STAFF ITEMS

1) TRAINING

Staff has spoken with the Board about bringing instructors from the School of Government to give members training. Specific topics given by the Board include reasonable use, and other topics for discussion are requested. The Board showed interest in a half-day training session. The session will need to be scheduled several months in advance.

2) NEW FORMS FOR APPROVAL AND DENIAL

Mr. Kontos prepared a new form for approval and denial of requests. He asked for any comments or suggestions for the form from the Board. The new form will be included in future packets. Mr. Cross suggested that instead of just saying 'based on the stated findings of fact...', the forms say 'I move that the Zoning Enforcement Officer findings of fact be incorporated by reference, and...'.

3) RULES AND PROCEDURES FOR BOA

Mr. Kontos updated the BOA Rules and Procedures based on the current rules and regulations, and requests any comments or suggestions. Mr. Cross asked about the rule concerning discussion of the cases with other parties. Mr. Kontos stated that such discussions should be refrained from, but the discussion cannot be considered, and should be disclosed at the beginning of the case.

4) LEGAL ISSUES

Mr. Kontos discussed a decision from the North Carolina Court of Appeals in *Chapel Hill Title and Abstract Company v. The Town of Chapel Hill*. The finding was that only the ordinance need be considered, not other covenants.

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There being no further business before the Board, the meeting adjourned at 3:33 p.m.

Respectfully submitted,

John Cross, Chairman
Greensboro Board of Adjustment

JC/jd